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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,331	02/17/2004	Steven Morocco	HAS1,005.1	9420
3775	7590	10/31/2005	EXAMINER	
ELMAN TECHNOLOGY LAW, P.C. P. O. BOX 209 SWARTHMORE, PA 19081-0209			FRANCIS, FAYE	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/781,331	Applicant(s) MOROCCO ET AL.	
	Examiner Faye Francis	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/19/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means", "said," and "**comprises**" should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because of the use of legal phraseology [note the word "**comprises**" in line 4. Correction is required. See MPEP § 608.01(b).

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Claim Objections

3. Claims 8, 12, 13 and 15 objected to because of the following informalities:

it appears that in line 3 "a deer call" should be replaced with --the deer call--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 2, 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite since all that the applicant considers to be encompassed by the phrase "accordion-like" cannot be determined.

Claim 4 recites the limitation "said O-ring" in line 1. There is insufficient antecedent basis for this limitation in the claim.

With respect to claim 5: it is not clear how the slider is adapted for frictionally engaging a finger of a user.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1, 3, 5-6, 8-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Forbes et al., hereinafter Forbes.

Forbes discloses in Fig 6, providing an adjustable-tone deer call device comprising: a barrel assembly having an outside barrel 610 and a reed support member 13 which corresponds to the claimed small inside barrel, the outside barrel having a cut-out opening [orifice 610a, a reed 11 mounted for vibration within the barrel assembly, said reed having a proximal free end toward the inlet end of said outside barrel, a reed holder [12 and plate 14] and a tone-adjusting slide assembly [slide 660, cover 662, cover 664, shaft 666 and ring 668] within the outside barrel and manually accessible through the cut-out opening [col 4 lines 50-62]. Also, Forbes discloses the tone-adjusting slide assembly comprising a slider [slide 660, cover 662, cover 664 and shaft 666] mounted for axial movement with respect to the reed and a reed contact band [ring 668] extending transversely and clampingly across the reed so as to clamp the reed at any of various selectable locations depending on the axial position of the tone-adjusting slide assembly, whereby the tone of the sound generated by the deer call can be adjusted without disassembling the deer call. Additionally, Forbes discloses the slider has protuberances [slide 660 and shaft 666] thereon

Should Forbes be later deemed not to meet claims 1, 3, 5-6, 8-11 because Forbes does not disclose a reed holder having sidewalls and a bottom, together forming along with the reed, an elongated air flow channel as disclosed by the applicant, it would have been obvious to provide the reed holder in the

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device of Forbes with walls [especially since such modification is well known in the art] in order to improve the sound [also, note Fig 7 and col 5 lines 1-20].

With respect to the method step in claims 8-11: Forbes clearly shows in Fig 6 that cover 662 is longer than cover 664. Additionally, the slide assembly can inherently be moved all the way to the right to the point at 610a and inherently leaving a cut out opening between the end of the cover 664 and barrel 610. Also note that covering of the cut out opening is only temporarily covered since the slide assembly can be moved back and forth covering and uncovering the cut out opening.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of either Ady [5,582,530] or Knight et al. [4,888,903], hereinafter Knight.

Forbes discloses most of the elements of this claim.

Forbes does not disclose the user drawing air from the distal end of the barrel assembly by inhaling.

Either Ady or Knight teaches the concept of vibrating a reed in a game call by either exhaling or inhaling air into the device to create sound [col 4 lines 1-6 and col 3 lines 56-65 respectively]. It would have been obvious for the user to draw air by inhaling from the device causing the reed to vibrate as taught by either Ady or Knight in order to create different sound from the call making the device more fun to play with.

9. Claims 2 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of Carlton [6,612,894].

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Forbes discloses most of the elements of these claims including an extension hose [resonance tubes 86 or 88]. Leady discloses may not disclose a flexible extension hose.

Carlton teaches the concept of providing a game call with flexible extension hose [chamber 102], which can be manipulated to point in different direction. It would have been obvious to provide the device of Forbes with the flexible extension hose as taught by Carlton generating more precise tone and in order to cause a softening of the resonant beat.

With respect to the method step in claims 13-14: Forbes clearly shows in Fig 6 that cover 662 is longer than cover 664. Additionally, the slide assembly can inherently be moved all the way to the right to the point at 610a and inherently leaving a cut out opening between the end of the cover 664 and barrel 610. Also note that covering of the cut out opening is only temporarily covered since the slide assembly can be moved back and forth covering and uncovering the cut out opening.

10. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of Carlton as applied to claims 2 and 13-14 above and further in view of either Ady or Knight.

Modified device of Forbes has most of the elements of these claims.

Forbes does not have the user drawing air from the distal end of the barrel assembly by inhaling.

Either Ady or Knight teaches the concept of vibrating a reed in a game call by either exhaling or inhaling air into the device to create sound [col 4 lines 1-6

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and col 3 lines 56-65 respectively]. It would have been obvious for the user to draw air by inhaling from the device causing the reed to vibrate as taught by either Ady or Knight in order to create different sound from the call making the device more fun to play with.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of McIntyre [5,643,039].

Forbes discloses most of the elements of this claim but for a lanyard.

McIntyre is cited to show desirability, in the relevant art, to provide a game call with a lanyard. It would have been obvious to provide the device of Forbes with a lanyard in order to hang the device from one's neck.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Allowable Subject Matter

13. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Faye Francis